



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Sherikon, Inc.
File: B-250152.4
Date: February 22, 1993

Keith L. Baker, Esq., Eckert, Seamans, Cherin & Mellott, for the protester.
William L. Walsh, Jr., Esq., J. Scott Hommer, III, Esq., and William Craig Dubishar, Esq., Venable, Baetjer & Howard, for Research Analysis and Maintenance, Inc., an interested party.

Thomas T. Basil, Esq., Office of the General Counsel, Department of the Navy, for the agency.
John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency properly decided to amend solicitation, conduct discussions, and request best and final offers where after making award on the basis of initial proposals it reasonably concluded, based on a protest by an unsuccessful offeror, that the solicitation contained ambiguities as to the factors to be evaluated for award.

2. Need to conduct a fair and impartial procurement process takes precedence over any possible competitive disadvantage to the original awardee which may result from the exposure of its price.

DECISION

Sherikon, Inc., which had been awarded a contract on the basis of initial proposals under request for proposals (RFP) No. N61339-92-R-0022, protests the decision by the Department of the Navy to amend the RFP, conduct discussions, request best and final offers (BAFOs), and to reevaluate proposals. Sherikon contends that the agency's action is unwarranted and will result in an auction because after award Sherikon's price was revealed.

We deny the protest.

The RFP, issued on February 14, 1992, by the Naval Training Systems Center, was for system engineering support services. The solicitation, a total small business set-aside, contemplated the award of an indefinite quantity contract with firm-fixed price and time-and-materials delivery orders for a base year and four option years. Offerors were to

submit Technical, Price and Management proposals. In the solicitation, the Navy advised offerors that it intended to award a contract without discussions, but reserved the right to conduct them if it later determined discussions to be necessary.

Following its evaluation of the proposals received, the Navy selected Sherikon's proposal for award, without discussions, on the basis that it represented the "best value" for the government. The award to Sherikon and the subsequent debriefings of unsuccessful offerors resulted in the filing of protests by Research Analysis and Maintenance (RAM), Metters Industries, and Enzian Technology, Inc. The Navy ordered Sherikon to stop work pending resolution of these protests.

Both RAM and Metters challenged the propriety of the Navy's evaluation of their own proposals and Sherikon's, as well as the Navy's failure to conduct discussions. The proposal of Enzian, the lowest-priced offeror, had been found technically unacceptable for failure to submit certain sample tasks allegedly required by the solicitation. Following its debriefing, Enzian protested that the rejection of its proposal on this ground resulted from the use of evaluation criteria which were not in the solicitation.

After evaluating Enzian's protest, the Navy advised all offerors that it had concluded that ambiguities did exist in the solicitation, and that it would be in the government's best interest to reopen the competition to all offerors, amend the RFP to clearly state its requirements, conduct discussions and receive BAFOs. The results of this process would determine whether Sherikon would remain the contractor or whether that firm's contract would be terminated for the convenience of the government and a new contract awarded.

Sherikon first protests the Navy's corrective action on the bases that there was no impropriety in the solicitation and that even if there were, Enzian was not prejudiced by it.

The Navy states that it agrees with Enzian that in evaluating the firm's technical proposal the agency considered factors which were not clearly identified by Section M of the RFP, which established the evaluation factors for award. Section M briefly advised offerors that "the sample tasks"--which were not more specifically identified--would be evaluated as part of the technical proposal. As a result, the Navy states, although it did give Enzian credit for submitting certain "sample tasks," it improperly downgraded Enzian's proposal for failure to submit a number of other "sample tasks" which were not identified as such in the instructions to offerors but were

tasks included within another section of the proposal. In effect, the Navy concludes, either Section M was improperly applied or evaluation factors not in Section M were applied without notice to the offerors.

Sherikon maintains that it is possible through a careful reading of the solicitation to discern what is to be evaluated under Section M. We think, however, that in the context of a small business set-aside in which the award was made on the basis of initial proposals, the agency acted reasonably in resolving any doubt as to the criteria for evaluation through clarifying its requirements, and permitting offerors to submit revised offers responding to them after discussions. Sherikon also maintains that Enzian was not prejudiced by any ambiguity which may have existed with regard to the evaluation of "sample tasks" because there were other, unrelated deficiencies in Enzian's proposal. The Source Selection Document, however, makes it clear that the principal finding which led to an unacceptable rating for Enzian under the "Technical" criterion was that Enzian had failed to submit the tasks required for evaluation.

Contracting officials in negotiated procurements have broad discretion to take corrective action where the agency determines that such action is necessary to assure fair and impartial competition. We will not object to a proposed corrective action, so long as the corrective action taken is appropriate to remedy the impropriety. Oshkosh Truck Corp.; Idaho Norland Corp., B-237058.2; B-237058.3, Feb. 14, 1990, 90-1 CPD ¶ 274. For the reasons stated above, we think the agency took the appropriate corrective action here.

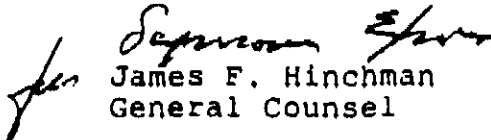
Sherikon also challenges the Navy's proposed action because unsuccessful offerors have had the benefit of debriefings, and because Sherikon's price has been revealed, which allegedly will result in an improper auction.

The Navy points out that under Federal Acquisition Regulation (FAR) § 15.1003 it was required to provide unsuccessful offerors with debriefings, on request, as soon as possible after award. We have held that no unfair competitive advantage results where an agency carries out this FAR requirement and later events require reopening proceedings under the procurement. Federal Auction Service Corp., et al., B-229917.4, et al., June 10, 1988, 88-1 CPD ¶ 553, recon. denied, B-229917.8, June 22, 1988, 88-2 CPD ¶ 597.

Finally, we have held that the need to preserve the integrity of the competitive procurement system outweighs the risk of an auction. As we have made clear in similar situations, the importance of correcting an improper award

through further negotiations overrides any possible competitive disadvantage to an offeror. See Norden Sys. et al. -- Reconn., B-227106.3 et al., Oct. 16, 1987, 87-2 CPD ¶ 367. The statutory requirements for competition take primacy over the regulatory prohibitions of auction techniques. See The Faxon Co., 67 Comp. Gen. 39 (1987), 87-2 CPD ¶ 425.

The protest is denied.


James F. Hinchman
General Counsel